

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KEITH MADDOX-EL,

Petitioner,

v.

Case Number 07-11349-BC
Honorable Thomas L. Ludington

KENNETH MCKEE,

Respondent.

**ORDER DENYING PETITIONER'S "NOTICE OF DEFECTIVE FILING PETITION
REQUESTING RULE 5 MATERIALS" AND ENJOINING PETITIONER FROM
FILING ANY FURTHER MOTIONS WITHOUT FIRST SEEKING AND OBTAINING
LEAVE OF THIS COURT**

Petitioner Keith Maddox-El is currently confined at the Kinross Correctional Facility in Kincheloe, Michigan,¹ and has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Now before the Court is Petitioner's "notice of defective filing petition requesting Rule 5 materials" [Dkt. # 40], which the Court will construe as a motion for default. Petitioner argues that a default judgment in his favor is justified because Respondent has allegedly failed to file some of the necessary Rule 5 materials. For the reasons stated below, the Court will deny Petitioner's motion.

Petitioner filed his petition for writ of habeas corpus on March 28, 2007. On April 3, 2007, this Court issued an order requesting Respondent to answer Petitioner's petition by October 5, 2007. On September 26, 2007, Respondent filed a motion requesting additional time to file a response, which the Court granted. On October 12, 2007, Respondent filed a response. However, on

¹ Petitioner was incarcerated at the Bellamy Creek Correctional Facility at the time that he filed his petition for writ of habeas corpus on March 28, 2007.

November 9, 2007, Petitioner filed a motion to stay the case, so that he could return to state court to exhaust his ineffective assistance of counsel claims. On December 11, 2007, the Court granted Petitioner's motion to stay the case.

On September 23, 2008, Petitioner filed an amended petition, which the Court construed as a motion to reopen his case. On October 10, 2008, the Court issued an order for the Clerk of the Court to reopen Petitioner's case and ordered that Respondent file a response to Petitioner's amended petition, as well as file any additional Rule 5 materials, by March 31, 2009. Respondent filed the necessary Rule 5 materials on January 23, 2008 [Dkt. # 34]. Thus, Petitioner's motion is moot. Furthermore, a default judgment is generally unavailable in a habeas corpus proceeding. *See, e.g., Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970).

Additionally, in light of Petitioner's repeated, frivolous filings in this case, Petitioner will be enjoined from filing any further motions until his habeas corpus petition is decided, without first seeking and obtaining leave of this Court. Such leave shall not be granted unless Petitioner can show that the claim or claims that he wishes to present have not been previously raised or disposed of and are properly before the Court, that his filing is made in good faith, and that the issues he raises are neither frivolous nor abusive of the judicial process. Petitioner is specifically cautioned that any attempt to file without first securing the required leave of the Court, or any request for leave that is frivolous or appears to have been submitted for an improper purpose, may result in the imposition of sanctions or the initiation of contempt proceedings.

Accordingly, it is **ORDERED** that Petitioner's "notice of defective filing petition requesting Rule 5 materials" [Dkt. # 40], is **DENIED WITH PREJUDICE**.

It is further **ORDERED** that Petitioner is **ENJOINED** from filing any further motions until his habeas corpus petition is decided, without first seeking and obtaining leave of this Court.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 23, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 23, 2008.

s/Tracy A. Jacobs
TRACY A. JACOBS